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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

Gloria Dunigan,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.:______________
	)	Plaintiff Demands Trial by Jury
	)	
Bank of America, N.A., a foreign corporation,	)	
Harvest Credit Management, LLC, a foreign limited liability company,	)	
SRS and Associates, Inc., a foreign corporation, and	)	
PMB Capital Group, a foreign corporation,	)	
	)	
Defendants.	)	

COMPLAINT

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq*. (hereinafter, "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and, in addition, state of Alabama common law claims for negligence, breach of contract, invasion of privacy, harassment, negligent hiring, and fraud (hereinafter "state claims").

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 15 U.S.C.§ 1681, and 28 U.S.C. §1367. Declaratory relief is available pursuant to 28 U.S.C. § 2201 and 2202. Venue in this District is proper in that Defendants' transact business and the conduct complained of occurred in Sumter County, Alabama.

III. PARTIES

3. Plaintiff Gloria Dunigan (hereinafter, "Plaintiff") is a natural person of the age of majority and residing in Sumter County, Alabama. Plaintiff is a "consumer" as that term is defined by the FDCPA, 15 U.S.C. § 1692a(3).

4. Defendant Bank of America, N.A. (hereinafter, "Defendant" or "BOA") is a corporation engaged in the business of furnishing credit to consumers residing within the state of Alabama.

5. Defendant Harvest Credit Management, LLC (hereinafter, "Defendant" or "Harvest") is a limited liability company engaged in the business of collecting consumer debts in the state of Alabama. The principal purpose of Harvest is the collection of such debts using the mails and telephone. Harvest regularly attempts to collect debts alleged to be due another. Harvest is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6), and the Code of Alabama, §40-12-80.

6. Defendant SRS and Associates, Inc. (hereinafter, "Defendant" or "SRS") is a foreign corporation engaged in the business of collecting consumer debts in the state of Alabama. The principal purpose of SRS is the collection of such debts using the mails and telephone. SRS regularly attempts to collect debts alleged to be due another. SRS is a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6), and the Code of Alabama, §40-12-80.

7. Defendant PMB Capital Group (hereinafter, "Defendant" or "PMB") is a foreign entity engaged in the business of collecting consumer debts in the state of Alabama. The principal purpose of PMB is the collection of such debts using the mails and telephone. PMB regularly attempts to collect debts alleged to be due another. PMB is a "debt collector" as

defined by the FDCPA, 15 U.S.C. § 1692a(6), and the Code of Alabama, §40-12-80.

IV. FACTUAL ALLEGATIONS

8. Plaintiff incorporates herein by reference each of the foregoing paragraphs.

9. Sometime prior to November 4, 2010, BOA assigned, conveyed or otherwise transferred an account (hereinafter, the "Account") allegedly belonging to Plaintiff to Harvest for the purpose of collection.

10. Subsequent to the aforesaid transfer, Harvest assigned the Account to SRS for assistance with collection efforts thereon.

11. On or around November 4, 2010, an agreement (hereinafter, the "Agreement") was reached between Plaintiff and SRS whereby SRS agreed to accept the sum of $1,530 as payment in full of the Account.

12. By virtue of a letter of said date, SRS confirmed settlement of the Account at $1,530. Furthermore, SRS represented that it would "issue a release which will release [Plaintiff] from any and all obligations to the above captioned matter upon completion of the payoff."

13. On the 15th of November, 2010, Plaintiff remitted or caused to be remitted check number 107092 in the amount of $1,530 to SRS as full and final settlement of the Account.

14. Nevertheless, commencing on or around January 10, 2011, a representative of PMB, specifically a representative purporting to be "Tonya McDonald," began contacting Plaintiff in an effort to collect upon the Account which, as stated hereinabove, was settled.

15. On or around the 16th day of March, 2011, Plaintiff forwarded or caused to be forwarded to PMB a cease and desist letter demanding compensation for PMB's unlawful conduct, confirmation that the Account is closed and paid in full, and demanding that all credit

reporting agencies be notified to delete any and all trade line entries pertaining to the Account.

16. Notwithstanding the aforesaid request, PMB has failed and/or refused to respond to Plaintiff cease and desist letter thus resulting in this proceeding.

V. GENERALLY

17. Due to Defendants' harassing, illegal and abusive tactics, Plaintiff was forced to retain the services of an attorney to represent her in this matter.

18. The facts considered, Plaintiff assumes that Defendants will continue to pursue the alleged indebtedness and, in addition, continue to violate the FDCPA and state law.

19. As a result of the acts alleged above, Plaintiff has suffered severe distress, mental anguish, headaches, embarrassment, loss of sleep, and was forced to hire the services of an attorney.

VI. CAUSES OF ACTION

COUNT I - DEFENDANTS HARVEST, SRS AND PMB VIOLATIONS OF FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

20. Plaintiff incorporates herein by reference each of the foregoing paragraphs.

21. Defendants violated the FDCPA. Defendants' violations include, but are not limited to, the following:

a) Contacting Plaintiff when Defendants knew Plaintiff was represented by an attorney with respect to the alleged debt and had knowledge of such attorney's name and address in violation of 1692c(a)(2) - Defendant PMB;

b) Contacting Plaintiff after receiving oral and written demands that Defendants cease further communication with Plaintiff in violation of 1692c - Defendant PMB;

c) Attempting to collect a debt not legally owed, using false and/or misleading representations, in violation of 15 U.S.C. §§ 1692e(2), 1692e(5), and 1692e(10) - Defendant PMB;

d) Taking illegal actions against Plaintiff in violation of 15 U.S.C. §§ 1692f(1) - Defendant PMB;

e) Reporting the debt within Plaintiff's credit reports in violation of 15 U.S.C. 1692b(2), 1692e(3) and 1692e(8) - All Defendants; and

f) Failing to provide Plaintiff with the dispute notice required by 15 U.S.C. 1692g - Defendant PMB.

22. As a result of the foregoing violations of the FDCPA, Defendants are liable to Plaintiff for declaratory judgment that Defendants' conduct violated the FDCPA, actual damages, compensatory damages, statutory damages, punitive damages, costs and attorney's fees.

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, jointly and severally, for the following:

a. Declaratory judgment that Defendants' conduct violated the FDCPA;

b. Actual, and punitive damages;

c. Statutory damages pursuant to 15 U.S.C. § 1692k;

d. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k; and,

e. For such other and further relief as the Court may deem just and proper.

COUNT II - ALL DEFENDANTS
NEGLIGENCE

23. Plaintiff incorporates herein by reference each of the foregoing paragraphs.

24. Defendants had a duty to ensure that Plaintiff was indebted to BOA prior to commencing and/or causing to be commenced collection activity against Plaintiff.

25. Furthermore, Defendants had a duty to refrain from engaging in collection activity on a previously settled account.

26. Defendants breached said duties of care.

27. More specifically, BOA had duties of care to identity the Account has having been settled in or around November, 2010, to refrain from any and all further collection activity upon the Account, to notify the credit reporting agencies that the Account was settled, and to refrain from assigning, conveying or otherwise transferring the Account to another entity for the sole purpose of collection. BOA breached said duties of care.

28. Defendants Harvest and SRS had duties of care to settle the Account upon the agreed terms, notify BOA that the Account was settled, to refrain from any and all further collection activity upon the Account, to notify the credit reporting agencies that the Account was settled, and to refrain from assigning, consigning or otherwise transferring the Account to another entity for the purpose of collection. Defendants Harvest and SRS breached said duties of care.

29. Defendant PMB had duties of care to ensure that Plaintiff was liable upon the Account and, upon learning otherwise, to cease and desist from any and all further collection activity thereon. Defendant PMB breached said duties of care.

30. As a proximate consequence of Defendants' negligence, Plaintiff has been embarrassed, humiliated, emotionally distressed and, in addition, forced to retain the services of an attorney to prosecute this matter.

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, jointly and severally, for the following:

a. actual damages;

b. compensatory damages; and,

c. For such other and further relief as the Court may deem just and proper.

COUNT III - DEFENDANTS BOA, HARVEST AND SRS
BREACH OF CONTRACT

31. Plaintiff incorporates herein by reference each of the foregoing paragraphs.

32. As stated hereinabove, Plaintiff entered into an agreement whereby she agreed to remit the sum of $1,530 to SRS in full satisfaction of the Account, and in fact remitted said sum.

33. Plaintiff conformed to the dictates of the settlement agreement.

34. BOA, Harvest and SRS agreed to issue a full release as to all Plaintiff's obligations upon the Account.

35. BOA, Harvest and SRS failed and/or refused to issue a full release to Plaintiff. Disturbingly, BOA, Harvest and SRS assigned, consigned or otherwise transferred the Account to PMB for the purpose of collection. These Defendants expected to derive an economic benefit from the said breach of contract.

36. BOA, Harvest and SRS acted wilfully and maliciously with the intent to injure Plaintiff.

37. As a proximate consequence thereof, Plaintiff has been deprived of the benefit to which he was entitled under the agreement.

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, jointly and severally, for the following:

a. Actual and compensatory damages; and

b. For such other and further relief as the Court may deem just and proper.

COUNT IV - DEFENDANTS BOA, HARVEST AND SRS
FRAUD

38. Plaintiff incorporates herein by reference each of the foregoing paragraphs.

39. BOA, Harvest and SRS represented to Plaintiff that, upon receipt of payment in the amount stated within the settlement agreement, these Defendants would close such account and identity the same as settled in full.

40. BOA, Harvest and SRS intended for Plaintiff to rely upon such fraudulent representations. In fact, Plaintiff relied and, because she has remitted a substantial sum in settlement of the account, such reliance has been to Plaintiff's detriment.

41. As a direct and proximate consequence of such misrepresentation, Plaintiff has been humiliated, embarrassed, emotionally distressed, suffered loss of sleep, lost money and, in addition, forced to hire the services of an attorney to defend this matter.

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, jointly and severally, for the following:

a. Actual and compensatory damages;

b. Punitive or exemplary damages; and

c. Such other and further relief as this Court may deem just and proper.

COUNT V - DEFENDANT PMB
HARASSMENT

42. Plaintiff incorporates herein by reference each of the foregoing paragraphs.

43. As stated hereinabove, PMB repeatedly contacted Plaintiff via telephone in an attempt to

collect upon the Account.

44. Such communications occurred after:

a) Plaintiff disputed the validity of such alleged indebtedness;

b) Plaintiff requested that PMB cease and desist collecting upon the Account; and

c) Plaintiff advised PMB that the Account had been settled.

45. By virtue of PMB's knowledge of the allegations contained with paragraph forty-four (44) hereof, Defendant's harassing communications to Plaintiff were willful, intentional and malicious with the intent to injure Plaintiff.

46. As a direct and proximate consequence of Defendant's harassment, Plaintiff has been embarrassed, humiliated, emotionally distressed and, in addition, forced to retain the services of an attorney to prosecute this matter.

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for the following:

a. actual damages;

b. compensatory and punitive damages; and,

c. for such other and further relief as the Court may deem just and proper.

COUNT VI - DEFENDANT PMB
INVASION OF PRIVACY

47. Plaintiff incorporates herein by reference each of the foregoing paragraphs.

48. As stated hereinabove, Defendant illegally and repeatedly intruded upon the seclusion and solitude of Plaintiff. Defendant's invasion of Plaintiff's privacy was willful, intentional and malicious with the intent to injure Plaintiff.

49. As a direct and proximate consequence of Defendant's invasion of Plaintiff's privacy, Plaintiff has been embarrassed, humiliated, emotionally distressed and, in addition, forced to retain the services of an attorney to prosecute this matter.

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for the following:

a. actual damages;

b. compensatory and punitive damages; and,

c. for such other and further relief as the Court may deem just and proper.

COUNT VII - ALL DEFENDANTS
NEGLIGENT HIRING, SUPERVISION, AND/OR TRAINING

50. Plaintiff incorporates herein by reference each of the foregoing paragraphs.

51. Defendants were negligent or wanton in the hiring, supervision and/or training of their agents and/or employees.

52. The agents and/or employees of Defendants, while acting in furtherance and in the line and scope of each individual's agency or employment, were incompetent to perform the requisite duties and, furthermore, Defendants knew or should have known of such incompetence.

53. As a result thereof, Defendants have engaged in, or caused others to engage in, conduct that constitutes collection activity upon an account that has been settled.

54. As a direct and proximate consequence of Defendants' negligent hiring, supervision and training, Plaintiff has been embarrassed, humiliated, emotionally distressed and, in addition, forced to retain the services of an attorney to prosecute this matter.

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, jointly and severally, for the following:

a. actual damages;

b. compensatory and punitive damages; and,

c. for such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this the 1 day of July, 2011.

/s/ Anthony B. Bush
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Bar Id. #: ASB-7306-A54B

DEFENDANTS MAY BE SERVED AT THE FOLLOWING ADDRESSES:

Bank of America, N.A.
C/o The Corporation Company
2000 Interstate Park Drive, Suite 204
Montgomery, Alabama 36109

Harvest Credit Management, LLC
600 17th Street, Suite 850
Denver, Colorado 80202

SRS and Associates, Inc.
1173 East Landis, Building B
Vineland, New Jersey 08360

PMB Capital Group
Post Office Box 25197
Tampa, Florida 33622